

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding Flexible Use of the 3.7 to 4.2)	GN Docket No. 18-122
GHz Band)	

**OPPOSITION TO SMALL SATELLITE OPERATORS' PETITION
FOR STAY OF THE C-BAND REPORT AND ORDER**

Intelsat License LLC (“Intelsat”) files this comment in opposition to the Petition for Stay (“Petition”) filed by ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A. (collectively, the “Small Satellite Operators”) with the Federal Communications Commission (the “FCC” or “Commission”).¹ Intelsat opposes the Petition pursuant to 47 C.F.R. § 1.45(d) and the Commission’s Public Notice seeking comments on the Petition to Stay.²

As a matter of law and policy, the rules the Commission adopted in the Report and Order that undergird the C-band spectrum clearing and transition process should not be stayed because, as the Commission correctly observed, the accelerated timeline for repurposing 300 MHz of C-band spectrum is critical to ensure that this spectrum will become available over the course of the

¹ Small Satellite Operators Joint Petition for Stay of Report and Order and Order of Proposed Modification Pending Judicial Review, 26 (May 15, 2020), [https://ecfsapi.fcc.gov/file/1051581626574/2020.5.15%20-%20Petition%20for%20C-Band%20Stay%20\(REDACTED\).pdf](https://ecfsapi.fcc.gov/file/1051581626574/2020.5.15%20-%20Petition%20for%20C-Band%20Stay%20(REDACTED).pdf).

² See generally Wireless Telecommunications Bureau Seeks Comment on Joint Petition for Stay of 3.7-4.2 GHz Band Report and Order and Order of Proposed Modification, *Public Notice*, GN Docket No. 18-122, DA-20-536 (May 20, 2020), <https://ecfsapi.fcc.gov/file/0520313011908/DA-20-536A1.pdf>.

next two years and six months for upcoming 5G terrestrial deployments.³ Any delay that throws this entire process into doubt would be contrary to the Commission’s publicly stated goals and the public interest in getting this spectrum to new uses while maintaining existing satellite operations.⁴

The Petition fails to demonstrate that the Small Satellite Operators will prevail on the merits of their legal and factual arguments, if for no other reason than the arguments presented in the Petition already have been presented, considered, and denied by the Commission.⁵ There is nothing new provided in the Petition for the Commission to modify its judgement and stay the implementation of its Report and Order.

While it is probably not unexpected that the Petition asserts with great vigor that the Commission’s judgements affecting their business interests were unfair or somehow arbitrary, the Small Satellite Operators cannot alter the fact that they do not serve customers in the continental United States (“CONUS”). In contrast, Intelsat has a large, existing customer base in CONUS and has now committed to undertake the complex and resource-intensive work of relocating its customers’ operations and those of affiliated earth stations in a compressed period of time.⁶ There should be no confusion about the very different status of the Small Satellite

³ See Expanding Flexible Use of the 3.7 to 4.2 GHz Band, *Report and Order & Order of Proposed Modification*, 35 FCC Rcd 2343, para. 4 (2020) [hereinafter “Report and Order”].

⁴ See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, *Order Denying Motion for Stay*, 34 FCC Rcd. 10336, paras. 22-23 (2019) (denying motion for a stay of adopted rules because doing so would be contrary to the public interest and statutory mandate).

⁵ See *id.*, para. 6 (citing *Nken v. Holder*, 556 U.S. 418, 426 (2009) and discussing four criteria that a petitioner must satisfy in order to justify a stay of adopted Commission rules: “(1) whether the requesting party has made a strong showing that it is likely to succeed on the merits; (2) whether the requesting party will be irreparably injured without a stay; (3) whether a stay will substantially injure other interested parties; and (4) whether the public interest supports a stay”).

⁶ See Intelsat License LLC Accelerated Relocation Election (May 26, 2020),

Operators and that of Intelsat.

As the FCC determined and explained in detail in the Report and Order, the Small Satellite Operators conceded that their C-band capacity was contracted for non-United States service, and thus they are not eligible as “space station operators that provide C-band services to *existing* U.S. customers using *incumbent* U.S. earth stations” to participate in the transition.⁷ The Petition furnishes the Commission with no reason to change course.

Rather than attempting to demonstrate a likelihood of success on the merits of their claim that the Commission’s determinations concerning the Small Satellite Operators’ eligibility was wrong, the Small Satellite Operators instead focus their Petition largely on attacking Intelsat and other eligible space station operators for having come forward with a proposal to clear 300 MHz of C-band spectrum in an aggressively short timeframe that does not also financially benefit the Small Satellite Operators, who are not undertaking this clearing project. Intelsat has made long-term substantial investments in serving U.S. customers in C-band and has a long track record of providing C-band services, primarily to media customers that, in turn, serve millions of Americans.⁸ Intelsat’s existing services to CONUS customers – which the Small Satellite Operators do not have – must be transitioned to the top 200 MHz of the C-band pursuant to the terms of the FCC’s Report and Order. Having no such services to transition, the Small Satellite Operators were not and are not similarly situated to Intelsat. This alone demonstrates not only that the Small Satellite Operators cannot succeed on the merits of their appeal, but also that they will not suffer irreparable harm absent a stay because they are not within the zone of parties the

<https://ecfsapi.fcc.gov/file/1052685638569/Accelerated%20Relocation%20Election%20-%20Intelsat%2026%20May%202020.pdf>.

⁷ Report and Order, paras. 241-49 (emphasis original).

⁸ *See id.* at 8-9, 26.

Commission reasonably defined as having a need to shift customers as part of any C-band transition in CONUS.⁹ Therefore, the Small Satellite Operators fail to satisfy two of the four criteria needed for the Commission to grant any stay of the Report and Order.

Further, the Small Satellite Operators' argument that eligible satellite operators should not be reimbursed for costs incurred in procuring, launching, and operating replacement satellites necessitated by the accelerated transition is nakedly self-serving, but more importantly, factually inaccurate.¹⁰ Contrary to the Petition's assertion that eligible space station operators such as Intelsat "would have launched [the replacement satellites] anyway had there been no C-band transition," Intelsat repeatedly has stated on the record as a former member of the C-Band Alliance that space station operators cannot provide substantially similar or better service to existing U.S. customers post-transition without building new satellites -- on an accelerated timeframe -- to provide additional on-orbit capacity.¹¹

⁹ Report and Order, App'x A, § 27.1411(a)(2) ("For purposes of determining eligibility to receive reimbursement for relocation costs incurred as a result of the transition of FSS operations to the 4000-4200 MHz band, . . . [a]n eligible space station operator is defined as an incumbent space station operator that has demonstrated as of February 1, 2020, that it has an existing relationship to provide service via C-band satellite transmission to one or more incumbent earth stations in the contiguous United States.") The fact that ABS appears to have very recently signed a U.S. customer on its ABS-3A satellite does not invalidate the Commission's determination that it did not provide C-band services to U.S. customers by February 1, 2020. *See* Desmond Dallen, *Comsat Inks Deal with ABS to Enhance C- and Ku-Band U.S. Connectivity Solutions on ABS-3A*, CONNECT-WORLD.COM (Apr. 29, 2020), <https://connect-world.com/comsat-inks-deal-with-abs-to-enhance-c-and-ku-band-u-s-connectivity-solutions-on-abs-3a/>.

¹⁰ *See* Petition at 2-3, 8-9, 21-22, 26 (May 15, 2020).

¹¹ *See, e.g.*, C-Band Alliance Ex Parte Letter, 8 (Jan. 14, 2020); C-Band Alliance Comments, 8-9 (Aug. 7, 2019), <https://ecfsapi.fcc.gov/file/108071378423084/CBA%20-%20Comments%20to%20Other%20Proposals%20PN.pdf>; C-Band Alliance Ex Parte Letter, Attachment Transition Implementation Process, 6-7 (Apr. 9, 2019), <https://ecfsapi.fcc.gov/file/10409183088602/CBA%20-%20Ex%20Parte%20re%20CBA%20Implementation%20Process.pdf>.

The Small Satellite Operators' assertion that Intelsat was going to replace all its C-band satellites is not correct. It does not take into account the convergence of: 1) FCC-mandated accelerated clearing of 60% of the C-band spectrum by December 2023, 2) the requirement to provide "substantially the same or better" service to existing customers, and 3) the ongoing (but slower) technology trends in U.S. program distribution. Prior to the adoption of the Report and Order, Intelsat had assessed how its customers were planning to densify programming on fewer transponders through compression and terrestrial means over a longer timeframe. The output of this assessment formed the basis of Intelsat's satellite replacement plan --one that would densify customer content on fewer (high-performance, full-spectrum) satellites.

The Report and Order reverses this planned path to long-term densification by creating a near-term clearing deadline of December 2023. This accelerated date reshapes the market as satellite operators must quickly migrate services on a "same or better" quality level. In essence, satellite operators must create a "non-commercial" balance of satellite capacity, compression gains and migration activities to clear the 300 MHz, while maintaining the desired service-quality levels, by December 2023. The accelerated deadlines create the immediate need to "spread" programming in the upper 200 MHz across all current cable-/broadcast-penetrated satellites, rather than pursuing the densification strategy (fewer orbital locations utilizing all 500 MHz) that was naturally evolving. Spreading the content absolutely requires the launch of an increased number of partial replacement satellites, as compared to Intelsat's plan prior to the C-band proceeding that would require the launch of fewer, more densified satellites.

These circumstances illustrate that the transition cannot be accomplished without additional satellites and that these new satellites would not have been necessary in the next three years if Intelsat had been able to continue to make use of the full 500 MHz of C-band spectrum

to serve its U.S. customers.¹² As a result, and based on the underlying record of the proceeding, it was both reasonable and expected that the Commission classified the costs of Intelsat’s new satellites to support the transition as reimbursable under the incentive relocation framework. The Commission can rationally make this decision based on the facts provided to it and in support of a rapid transition of spectrum to new 5G use. The Petition thus does not present a valid basis to warrant a stay of the Report and Order.

The Commission has the requisite legal authority to fashion a framework for new 5G licensees who benefit from the ability to deploy 5G services earlier to pay the costs of this rapid C-band transition by funding incentive payments to satellite licensees that voluntarily relinquish licensed spectrum usage rights in exchange for doing the hard work of completing relocation on an accelerated timeline.¹³ Intelsat previously presented on the record why the accelerated timeline, albeit feasible, creates significant additional costs to incumbent space station operators, which, in turn, satisfies the “reasonableness” standard set forth in the Report and Order for the incentive payments.¹⁴ While the Small Satellite Operators have no problem criticizing this framework as unfair to them, their lack of services in CONUS disqualifies them from

¹² The Petition also asserts that the Commission was wrong in its assessment that incentive payments it set were a necessary element to support accelerated clearing of 300 MHz because the December 2023 deadline “coincided with the timeframe the incumbents already said they could achieve.” *See* Petition at 9. Yet, the C-Band Alliance’s offer to clear spectrum in three years assumed that its market-based proposal would yield sufficient financial resources required to undertake clearing on an accelerated timetable with substantially greater incentives to do so. The Commission similarly determined that it would dictate the terms for clearing on an accelerated timetable. In either case, however, clearing in such a short timeframe is a complex process that would not be feasible without sufficient resources in the form of incentive payments.

¹³ *See* Report and Order, paras. 43 (citing 47 U.S.C. § 309(j)(8)(G)(ii)(I)), 188-190.

¹⁴ *See, e.g.*, Intelsat License LLC Comments, 4-5 (May 14, 2020), <https://ecfsapi.fcc.gov/file/10514933213749/Intelsat%20Comment%20-%20Preliminary%20Cost%20Catalog%2014%20May%202020.pdf>; C-Band Alliance Ex Parte Letter, Attachment Transition Implementation Process, 6 (Apr. 9, 2019).

participating in the transition of services to a reduced portion of the C-band.

Finally, Intelsat observes that the Petition fails entirely to address the third criteria to be considered in any stay proceeding – whether the stay will substantially injure other parties interested in the proceeding – and similarly fails to demonstrate that a stay would serve the public interest.¹⁵ The answers to these points are self-evident. The Small Satellite Operators’ claim that staying this proceeding would serve the public interest because the incentive payments “reduce auction proceeds that could be returned to U.S. taxpayers” is refuted by abundant evidence on the record.¹⁶ In reality, timing of the accelerated relocation for the C-band is critical. As the Commission correctly and emphatically pointed out in this proceeding, “*annual* increase in consumer surplus” as the result of the accelerated timeframe would be “approximately equal to the total amount paid by the purchaser” whereas any delay would diminish the economic value of repurposing this band and United States’ competitiveness in 5G deployment.¹⁷ Therefore, a stay of this proceeding would likely cause harm to many stakeholders, including the economy as a whole, and be contrary to the public interest.

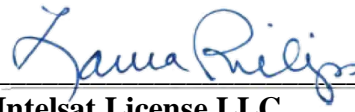
Because the Small Satellite Operators failed to satisfy any criteria that warrant a stay of the rules adopted in the Report and Order, their Petition must be denied.

¹⁵ See *Order Denying Motion for Stay*, 34 FCC Rcd. 10336, para. 6.

¹⁶ Petition at 21-22.

¹⁷ See, e.g., Report and Order, paras. 190 (“Coleman Bazelon estimates that a one year of delay in transitioning the spectrum would reduce the economic value of repurposing this band by between 7% and 11%” and “notes that ‘every \$1 billion in delay costs would create total social costs of \$10 billion to \$20 billion’”), 226.

Respectfully submitted,



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May 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2020, a true copy of the foregoing Intelsat License LLC's Opposition to Small Satellite Operators' Petition for Stay of the C-Band Report and Order was served via electronic mail upon:

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